HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO. 44 OF 2003.

Prakash Jaywant Kaskar. ..Appellant.

Versus.

Smt. Jyoti Prakash Kaskar. ..Respondent.

Mr. R.D.Dave for the appellant.

Mr. P.G.Lad for the respondent.

CORAM: S.B.MHASE &
D.B.BHOSALE, JJ.

DATE: FEBRUAY 15, 2005.

P.C.

1. The counsel for both parties are present. Husband - Prakash is present. Wife - Jyoti is present along with two daughters - Ms. Sneha and Ms. Arati.

2. It is submitted by the learned counsel that the parties have settled their dispute by withdrawing the allegations made against each other in M.J.Petition No. A-1484/97 and they have submitted that the decree passed in the said M.J.Petition be set aside and in stead the said petition may be allowed to be converted into a petition under section 13-B of the Hindu Marriage Act, i.e. a "**petition for divorce by mutual consent**". They further submitted that the decree for dissolving the marriage on the basis of the mutual consent terms of the

husband and wife may be passed. In the consent terms, they have also made a provision in respect of the custody of the children, in the manner that Ms.Sneha and Ms.Arati shall remain with the respondent - wife and the custody of Ms.Shradha is kept with the husband.

. In order to provide shelter, the appellant-husband has sold room No.26 situated at Mahatma Phule Co-op. Housing Society, Parel, Boiwada, Mumbai - 400 012 and out of the said amount the accommodation- Hut has been provided to the respondent-wife in Panchsheel Nagar No.1, Pipe Line Zopda No.661/A, Mahanagar Palika Kamgar Vasahat Seva Committee, Sion Koliwada, Mumbai - 400 022 and further a cash of Rs.1 lac has also been paid by way of maintenance, permanent alimony to the respondent-wife and two daughters as a full and final settlement. The respondent-wife has also confirmed the receipt of the said hut and Rs.1 lac.

3. The respondent-wife has further given undertakings that she will maintain two daughters in her custody till their marriage and she will use the said house for their residence and will use the said amount of Rs.1 lac for the benefit of two daughters. It is further stated by the respondent - wife that she is self-employed and she is having sufficient income out of the business

and she can maintain herself and both the daughters.

4. We have ascertained from the parties that they have understood the contents of the consent terms and have voluntarily signed the said consent terms. Consent terms are signed by the Advocates and parties who are present in the court and who are identified by the Advocates before us. We find that the consent terms have been voluntarily signed and, therefore, accept the said consent terms. In the circumstances, we allow the M.J.Petition No.1484/97 to be converted into petition under section 13-B of the Hindu Marriage Act, i.e. petition for divorce by mutual consent since the marriage has been broken prior to 1997. We find that the parties have come to the conclusion to dissolve the marriage after a prolonged litigation. We find that it is not possible for the parties to come together. We, therefore, accept their prayer to grant dissolution of marriage by a decree under section 13-B. We also accept the undertaking given by the parties in the consent terms. We equally set aside the decree passed by the family court and substitute the decree in terms of the consent terms with a declaration that the marriage of the appellant and respondent stands dissolved under section 13-B of the Hindu Marriage Act, 1955.

. Office is directed to draw up the decree accordingly. In the facts of the case there shall be no costs.

(D.B.BHOSALE,J.) **(S.B.MHASE, J.)**

:srp/2005/